

2007 Legislative Changes to Sex Offender Registry & Sexually Violent Predator law

House Enrolled Act 1386 (Public Law 216) made numerous changes to the sex offender registry laws. The changes are effective July 1, 2007. HEA 1386 also made changes to the sexually violent predator law. These changes were effective May 10, 2007. Below is a summary of the changes.

1. Sex and Violent Offender Registry (IC 11-8-8)

- The crimes of murder and voluntary manslaughter are added to the registry, and the name of the registry is changed to the “Sex and Violent Offender” registry.
- The following crimes are added to the list of offenses requiring a person to register as a sex offender: possession of child pornography as a first offense (IC 35-42-4-4(c)), promoting prostitution as a Class B felony (IC 35-45-4-4), promotion of human trafficking if the victim is less than 18 years of age (IC 35-42-3.5-1(a)), sexual trafficking of a minor (IC 35-42-3.5-1(b)), human trafficking if the victim is less than 18 years of age (IC 35 –42-3.5-1(c)).
- Registration as a sex or violent offender is not required for: (1) a parent/guardian who is convicted of kidnapping or confining a child of the parent or a child over whom the guardian has guardianship; or (2) a person convicted of sexual misconduct with a minor as a Class C felony if the person is not more than 4 years older than the victim (5 years if the offense occurred before July 1, 2007) and the court finds that the person should not be required to register as a sex offender.
- Sex and violent offenders must register if they work in Indiana for a period of 7 consecutive days or for a total of 14 days during any calendar year (IC 11-8-8-7) (reduced from 14 and 30 days, respectively).
- For any sex or violent offender who is not committed to the Department of Correction, the sentencing court’s probation department shall transmit to DOC a copy of the sex or violent offender’s sentencing order, presentence investigation, and any other information required by the department to make a determination concerning sex or violent offender registration (IC 11-8-8-9).

- Sexual battery as a Class D felony is removed from lifetime registration when the offender used force or the threat of force against the victim or a member of the victim's family (IC 11-8-8-19(d)(2)).
- Counties may adopt an annual sex or violent offender registration fee and a sex or violent offender address change fee. The registration fee may not exceed \$50 and the address change fee may not exceed \$5 per address change. If a county adopts the fees, it must establish a county sex and violent offender administration fund. Fees collected by local law enforcement must be transferred to the county auditor. The auditor deposits 90% of any fees collected into the county sex and violent offender administration fund and transfers 10% of any fees collected to the treasurer of state for deposit in the state sex and violent offender administration fund. A county fiscal body may appropriate money from the fund to an agency or organization involved in the administration of the registry to defray the expense of administering or ensuring compliance with the registry. (IC 36-2-13-5.6).

2. Sexually Violent Predators—changes effective May 10, 2007

- The sexually violent predator section (IC 35-38-1-7.5) now also applies when a juvenile court issues a dispositional decree for a sex offense for which the person is required to register as a sex offender (IC 35-38-1-7.5(c)).
- If a sexually violent predator's sentence does not include a commitment to the Department of Correction, the court shall order the parole board to place the person on lifetime parole and supervise the person in the same manner that the parole board would supervise a sexually violent predator who has been released from imprisonment and placed on lifetime parole. (IC 35-38-1-29). The parole board may permit a probation department, community corrections program or community transition program to exercise the parole board's authority during the other agency's period of supervision.
- A court may not allow a sexually violent predator or an offender against children to reside within 1000 feet of school property. (IC 35-38-2-2.2).

- The sexually violent predator designation by operation of law (IC 35-38-1-7.5(b)) applies if the person was released from prison, secure detention or probation for the offense after June 30, 1994.
- The list of offenses for the sexually violent predator designation by operation of law was expanded to include: an attempt or conspiracy to attempt a listed offense; a crime under the laws of another jurisdiction (including a military court) that is substantially equivalent to any of the listed offenses; a sex offense committed while having a previous unrelated adjudication as a delinquent child for a sex offense and the court finds (after considering expert testimony) by clear and convincing evidence that the person is likely to commit an additional sex offense; and a sex offense committed while having a previous unrelated adjudication as a delinquent child for a sex offense if the person was required to register as a sex or violent offender.
- At the sentencing hearing, the court shall indicate on the record whether the person has been convicted of an offense that makes the person a sexually violent predator under IC 35-38-1-7.5(b).
- If a person is not a sexually violent predator by operation of law, the prosecutor may request the court to conduct a hearing to determine whether the person (including a child adjudicated to be a delinquent child) is a sexually violent predator under IC 35-38-1-7.5(a). If the court grants the motion, the court shall appoint 2 psychologists or psychiatrists with expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the psychologists/psychiatrists, the court determines whether the person is a sexually violent predator under IC 35-38-1-7.5(a). This hearing may be combined with the person's sentencing hearing. (IC 35-38-1-7.5(e)).
- A court may dismiss a petition to determine if a person is a sexually violent predator or conduct a hearing to determine if a person should no longer be considered a sexually violent predator (section does not apply to person with 2 or more unrelated convictions for sex offenses required to register).
- A person is not a sexually violent predator by operation of law if: the victim was not less than 12 years old; the offender is not more than 4 years older than the victim; the relationship was a

dating relationship or an ongoing person relationship (not including family relationships); the offense was not: rape, criminal deviate conduct, an offense committed using/threatening deadly force or a deadly weapon, an offense resulting in serious bodily injury, an offense facilitated by furnishing the victim a drug without the victim's knowledge; the person has not committed another sex offense against any other person; the person did not have a position of authority or substantial influence over the victim; and the court finds that the person should not be considered a sexually violent predator. (IC 35-38-1-7.5(h)).

3. Other sex offender-related statutory changes

- A person who is an offender against children may petition the court to consider whether the person should no longer be considered an offender against children. A person cannot file a petition if he/she has 2 or more unrelated convictions for an offense described in IC 35-42-4-11(a). The person may file the petition no earlier than 10 years after release from incarceration, probation or parole, whichever occurs last. The court can dismiss the petition or conduct a hearing with testimony from 2 psychologists or psychiatrists. If the court finds that the person should no longer be considered an offender against children, the court shall send notice of the finding to the Department of Correction. (IC 35-42-4-11).
- A court may suspend the sentence for Class B felony child molesting if the victim was not less than 12 years old, the offender was not more than 4 years older (5 years if dating the victim) than the victim, the offender was not in a position of authority over the victim and the offender has not committed another sex offense against any other person. (IC 35-50-2-2(b)).
- For Class A felony child molesting convictions where the victim is less than 12 years old and the offender is at least 21 years old, the court may suspend only that part of the sentence that is in excess of 30 years (IC 35-50-2-2(i)).
- A court may not grant a waiver for an offender against children to reside within one mile of the victim of the sex offense while on probation or parole. (IC 35-38-2-2.5(f)). *Effective May 10, 2007.*

- A new defense to sexual misconduct with a minor was added in IC 35-42-4-9(e). It is a defense to a prosecution if all the following apply : (1) the person is not more than 4 years older than the victim; (2) the relationship between the person and the victim was a dating relationship or an ongoing personal relationship (this does not include a family relationship); (3) the crime was not committed by a person at least 21 years of age, was not committed using or threatening use of force, was not committed while armed with a deadly weapon, did not result in serious bodily injury, was not facilitated by furnishing the victim with a drug or controlled substance without the victim's knowledge, and was not committed by a person having authority or substantial influence over the victim; and (4) the person has not committed another sex offense against any other person.